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Fed. Comm Act

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7 May 1948

MEMORANDUM FOR: Meeting of USCICC Sub-Committee on Intelligence and Security

Subject : Amendment to the Communications Act of 1934, I.D.-184

References : a. Special report of the Sub-Committee, dated 25 April 1948, with three proposed drafts.
b. Letter of 29 April 1948 from the Chairman, USCICC to Sub-Committee, with fourth draft

1. Subject to discussion of the points involved, CIA maintains a preference for its draft of the proposal to amend the Communications Act on the following grounds:

a. The version of I.D.-184, as in the Bureau of the Budget on 21 April 1948, is felt to be objectionable in the following respects:

(1) It does not clearly relieve the communications carriers of the prohibitions in Section 605 so as to protect them in the surrender of communications information to the agencies involved.

(2) In so far as it is unlimited in scope and permits interception, receipt, or utilization of interstate and intrastate communications, it is felt that it would meet opposition in Congress.

(3) In so far as it could be construed to authorize wire tapping and the use of information thus obtained as evidence in criminal prosecutions,

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it is felt that it would meet opposition in Congress, and, if tested, might be held unconstitutional by the courts.

(It is acknowledged that this draft, if passed, would achieve the result desired by CIA.)

b. Revised version of I.D.-184, under consideration by the Secretary of Defense as of 21 April 1948.

(1) CIA objects to the specific association of "communications intelligence activities" with this exception to the Communications Act and the inclusion of a definition of "communications intelligence". CIA is compelled to object to any version that clearly identifies "communications intelligence".

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c. Version of I.D.-184 suggested by CIA on 21 April 1948, as amended 6 May 1948.

(1) It is felt that this draft would authorize acquisition of the information desired and provide protection for the carriers.

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(2) Inasmuch as it is limited to procurement of foreign intelligence information, it is believed that it would be less objectionable to Congress than a broader authority.

(3) Inasmuch as it prohibits the use of information so received for use in criminal prosecutions, it is felt that it would not be subject to a charge in Congress of authorizing wire tapping to trap criminals and would stand up under any foreseeable court tests.

(4) It is based upon general intelligence needs which are presently of recognized importance in Congress and does not point specifically to communications intelligence and thereby raise that subject for possible debate.

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d. Draft submitted with letter of 28 April 1948 from the Chief, Communications Research.

(1) Conventions which are ratified by two-thirds of the Senate are regarded as equivalent to treaties which are on an equal plane in the eyes of

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the law with Federal statutes. Congress may legislate in contravention of a treaty provision, and the courts will normally be bound by such legislation. A Federal Circuit Judge has stated that treaties stand upon no higher plane than statutes of the United States (U.S. vs. Siem, 299 Fed. 582, CCA 9th, 1924). A District Court has stated that unless it unmistakably appears that a Congressional act was intended to be in disregard of a principle of international comity, the presumption is that it was intended to be in conformity with it. Consequently, it is at least arguable that the rights reserved in Article 32 of the Convention could be exercised without further legislation, inasmuch as Section 605 does not specifically bind the sovereign in its prohibition. Incidentally, Article 29 of the Convention strengthens this position, as members therein reserve the right to stop the transmission of any private telegram which may appear dangerous to the security of the state or contrary to their laws, with notification to the sender of such stoppage except when such notification may appear dangerous to the security of the state. This appears clearly to imply a right by the sovereign to inspect and, if necessary to the national security, to censor communications.

Since need for legislation to clarify these points has not been demonstrated in the past, it might be difficult to justify on that basis now. It is felt preferable to base the amendment on foreign intelligence requirements.

(2) More important in our opinion, such conventions are subject to change and may be denounced at any time by parties signatory thereto, in which case, presumably, legislation depending on such a Convention would fall to the extent that the Convention was so changed or denounced.

(3) It is felt that the draft is too broad in including interstate communications, particularly as there is no direct relationship between interstate communications and the International Telecommunications Convention.

(4) The right to be exercised under the Convention includes the right to communicate correspondence to the competent authorities, in order to insure the application of internal laws. To amend Section 605 to authorize the exercise of this right, points directly to the use of information thus obtained in criminal prosecutions. This raises again a possible question of constitutionality.